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Supreme Court, U.S.
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No. 07- (1)

IN THE
Supreme Court of the United States

RICHARD A. CLINE,

Petitioner,

v.

DONNA R. CLINE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Tenth Circuit affirmed a decision of the Bankruptcy Appellate Panel of the Tenth Circuit (BAP-10th Circuit), which affirmed a decision of the United States Bankruptcy Court for the Western District of Oklahoma. The bankruptcy Court ruled that a $250,000.00, divorce related debt owed to respondent was in the nature of spousal support and thus, was non-dischargeable in Petitioner's's bankruptcy.

Mr. Cline argued that the bankruptcy court error was related to the Court's inaccurate determination that the parties intended the $250,000.00 debt to function as support in spite of the property settlement agreement express statements to the contrary. Further, Mr. Cline argued that the bankruptcy Court's finding violated the Rooker-Feldman doctrine. In its affirmance of the bankruptcy Court's ruling, the Tenth Circuit directly conflicts with applicable Tenth Circuit decisions which control the subject matter. Further, the Tenth Circuit's affirmance sanctions the bankruptcy Court misapplication of its own rule as stated in *In Re Sampson*, 997 F.2d 717 (10th Cir. 1993).

Two questions are presented:

1. Does the rule in *In Re Sampson*, 991 F.2d (10th Cir. 1993), require an inquiry into the shared intent of the parties at the time the obligation arose and is the Tenth Circuit's decision ignoring the unambiguous language of the debt obligation contrary to established precedent?

2. Does the bankruptcy Court's ruling, which is affirmed by the Tenth Circuit violate the Rooker-Feldman doctrine?

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OPINION BELOW

The Opinion of the United States Court of Appeals for the Tenth Circuit is reported at 2007 WL 4439693.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 11 U.S.C. § 523 (a)(5)(B).

Exceptions to discharge.

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) or this title does not discharge an individual debtor from any debt –

(5) for a domestic support obligations; to a spouse former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with state or territorial law by a governmental unit or property settlement agreement, but not to the extent that –

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

STATEMENT OF THE CASE

On April 26, 2004, Donna R. Cline filed an Adversary proceeding against Petitioner, Richard A. Cline. The action was brought seeking to render certain marital debts non-dischargeable under 11 U.S.C. § 523(a)(2)(5)(B) and (6). Richard Cline answered the Complaint on May 19, 2004. Therein, Mr. Cline denied that the disputed debt was in the nature of support, but rather was property division. On July 13, 2004, Petitioner filed a Motion for Summary Judgment, to which Respondent responded on August 2, 2004. On August 30, 2004, the Court denied Mr. Cline's Motion for Summary Judgment. The Court conducted a trial on the merits on September 15, 2004. On September 16, 2004, the Court ruled that the obligation of the Petitioner to pay $250,000.00, was excepted from his discharge. All other debts resulting from their divorce, except child support, was discharged by the Court.

The disputed debt arose from the parties' divorce. After several years of marriage, Mr. and Mrs. Cline divorced on August 23, 2000. The Decree of Divorce incorporated a "Confidential Settlement Agreement." The Confidential Settlement memorialized a detailed property and debt division between the parties. The Agreement specifically enumerated a division of real and personal property between Mr. and Mrs. Cline.

In Subsection I, paragraph 1, of the Confidential Settlement Agreement, Mrs. Cline was to quit claim the residence located at 1310 N. Thoroughbred Way, Mustang, Oklahoma. In exchange for Mrs. Cline quit claiming to Mr. Cline this property, Mr. Cline was to pay to Mrs. Cline the sum of $250,000.00. Mrs. Cline's interest in the $250,000.00, payment was secured by her marital interest in certain real properties.

The payment was discussed in the Settlement Agreement under the heading "Settlement of Anticipated Revenues From Corporate Entities. That paragraph stated as follows:

> Husband and Wife expect certain revenues to be forthcoming to one or more of Husband's corporate entities from settlement, verdict or arbitration award from Panhandle Eastern Pipeline Co. And other potential payors. Neither Husband nor Wife know the amount of such monies nor exactly when they will become available, so that, in this uncertainty, knowing that the sums may be more or less than each now believes or hopes, Husband and Wife have negotiated, and Husband has offered to settle for a sum certain and Wife has accepted that sum, and therefore Husband, **as property settlement,** hereby grants, bargains, and conveys to Wife payment of Two hundred fifty thousand ($250,000.00) dollars to be paid within twelve (12) months from the effective date of this Confidential Settlement Agreement and Decree of Divorce, provided that his payment of Two hundred

> fifty thousand ($250,000.00) dollars shall be in addition to the other provisions of payment in this Confidential Settlement Agreement, and provided that upon full and complete payment to Wife of said Two hundred fifty thousand ($250,000.00) dollars by Husband, Wife shall then execute and deliver to Husband a quit claim deed in favor of Husband conveying all Wife's right, title, and interest in and claim to the residence at 1310 N. Thoroughbred Way, Mustang, Canadian County, Oklahoma, known more particularly as Lot 8, Thoroughbred Acres 2nd, an unrecorded plat in Mustang, Canadian County, Oklahoma, and the adjoining real property known as Lots 1, 2, 3, 6, and 7, Thoroughbred Acres 2nd, an unrecorded plat in Mustang, Canadian County, Oklahoma. (Emphasis Added)

Additionally, the Settlement Agreement divided the remaining marital assets and debt between the parties. Real property, household goods and furnishings, automobiles, stock, bank accounts, and debts associated with these assets were divided. The only support agreed to be paid by Mr. Cline was detailed in paragraph 8, under the heading "Additional Child Support." No other support was to be paid by Petitioner to Respondent.

After judgment was rendered in the bankruptcy Court, Petitioner filed a Notice of Appeal on September 24, 2004, with the Bankruptcy Appellate Panel for the United States District Court of Appeals for the Tenth Circuit. A judgment was entered by the Tenth Circuit Bankruptcy Appellate Panel on September 21, 2005. On

October 18, 2005, Mr. Cline filed a Notice of Appeal with the Tenth Circuit court of Appeals. On December 19, 2007, the Tenth Circuit Court of Appeals affirmed the bankruptcy Court and Bankruptcy Appellate Panel's decision.

REASONS FOR GRANTING THE PETITION

The Tenth Circuit has created a conflict within its own circuit by failing to follow the established rule as articulated in *In Re: Sampson*, 997 F.2d 717 (10th Cir. 1993). This Court's intervention is necessary to resolve a conflict within the Tenth Circuit, which was created by the Tenth Circuit. Further, the decision sanctions a violation of the "Rooker-Feldman" doctrine.

I. REVIEW IS WARRANTED AS THE TENTH CIRCUIT'S OPINION DEVIATES FROM ESTABLISHED PRECEDENT

A. THE COURT FAILED TO CONDUCT A TWO PART TEST AND THE TENTH CIRCUIT'S DECISION AFFIRMS THIS FAILURE.

Generally, under Chapter 7 of the Bankruptcy Code, a Debtor can discharge all debts that arose before the date of the Order for Relief. (*See* 11 U.S.C. § 727(b)). Under the applicable version of 11 U.S.C. § 523(a)(5), debts which are excepted from discharge are debts to a former spouse for alimony to, maintenance for, or support of such spouse provided that such liability is actually in the nature of alimony, maintenance, or support. This provision in the Bankruptcy Code departs from the general policy of providing the debtor a fresh start in order to enforce an overriding public policy

favoring the enforcement of familial obligations. *In re: Sampson*, 997 F.2d 717 (10th Cir. 1993), quoting *Shaver v. Shaver*, 736 F.2d 1314, 1315-1316 (9th Cir. 1984). Further, whether a debt is non-dischargeable under § 523(a)(5) is a question of Federal Law. *In re: Sampson*, at 721.

In *Sampson*, *supra*, the Tenth Circuit articulated a consistent standard for bankruptcy courts to apply in order to determine whether a debt to a former spouse was actually in the nature of alimony, maintenance or support. The current decision is contrary to the rule in *Sampson*, which is sufficient grounds for this Court to grant Certiorari. The Court in *Sampson*, analyzed two opinions, *In re: Goin*, 808 F.2d 1391 (10th Cir. 1987) and *In re: Yates*, 807 F. 2d 874 (10th Cir. 1986) in order to establish a clear, consistent rule and resolve any conflict within the Tenth Circuit. The *Yates* Court stated that the intention of the parties was the initial inquiry in analyzing whether a debt to a former spouse was actually in the nature of alimony, maintenance or support. The *Yates* Court stated if the parties did not intend to create a support obligation, then the debt was a property settlement and must be discharged. In *Yates*, the Tenth Circuit stated that the determination of the parties' intent should be made by looking at the substance of the agreement viewed in the crucible of surrounding circumstances. Furthermore, *Yates* stated,

> a written agreement between the parties was persuasive evidence of intent and if the agreement between the parties clearly shows

> that the parties intended the debt to reflect their support or a property settlement then that characterization should normally control.

Sampson at 722, quoting *Yates* at 878.

Goin, on the other hand, articulated an analysis that included the consideration of both the parties' intent and the substance of the agreement. The Court in *Sampson* indicated that the *Goin* analysis could potentially conflict with the *Yates* analysis in as far as *Yates* was concerned where an unambiguous agreement would normally control.

In re: Sampson reconciled *Yates* and *Goin*. *See In re: Sampson* beginning at 722. First, *Sampson* identified that a debtor's lack of duty under state law to support his or her former spouse would not control whether an obligation to the former spouse was dischargeable in bankruptcy. The *Sampson* Court stated that the inquiry by Federal Courts into the actual nature of the obligation promotes nationwide uniformity of treatment between similarity situated debtors and furthered 11 U.S.C. § 523(a)(5)'s underlying policy favoring enforcement of familial support obligations. These would be the considerations of a debtor's fresh start. The *Sampson* Court stated that the parties' intent was the initial inquiry to determine whether a debtor's obligation to his or her former spouse was actually in the nature of alimony, maintenance or support. *Id.* at 723.

However, other courts have stated that the intent of the parties can be discerned from an unambiguous state

court decree. (*See In re: Edwards*, 172 B.R. 505 (D. Conn. 1994). The *Edwards* court stated it was particularly appropriate to afford weight to the language of the decree where it was clear that the parties had the bankruptcy standard in mind. Furthermore, the *Edwards* Court, in reviewing the *Sampson* decision, determined that the *Sampson* decision placed the bankruptcy court in the role of an appellate court with the extraordinary power to decide de novo an issue of fact determined in the state trial court. *Edwards* at 521. Moreover, the *Sampson* court admitted that a written agreement between the parties is persuasive evidence of intent. *See Sampson*, at 722.

Here, the settlement agreement could have not been more specific that the parties intended that the $250,000.00, obligation was a property settlement. Specifically, on page 10 of the Confidential Settlement Agreement, the payment is specifically identified as "property settlement." This payment is referenced further in the paragraph of the Confidential Settlement Agreement entitled "real property" under the sub-heading "property to wife." The settlement agreement in this paragraph provided that Appellant was to pay Appellee the sum of $250,000.00, in exchange for a quit claim deed from Appellee for the property located at: 1310 N. Thoroughbred Way, Mustang, Canadian County, Oklahoma. The payment of this amount is identified under the sub-heading, "property to wife" and is undoubtedly part of the parties' heavily negotiated property settlement, with Mrs. Cline having counsel by a bankruptcy attorney.

However, as the *Sampson* court indicated, this could not end the inquiry. The second part of the inquiry,

should have analyzed the function served by the obligation at the time of divorce. No evidence of the Mrs. Cline's need for support was presented. The Tenth Circuit's affirmance ignored the required second Part of the *Sampson* test. The bankruptcy Court acknowledged that Mrs. Cline had no meaningful employment subsequent to the marriage and that she stayed at home and took care of her children while Mr. Cline worked. The Court found that both parties where in good health. However, none of these factors were considered in a second-prong analysis under *Sampson.* The Tenth Circuit's ruling has now created a discrepancy in dealing with dischargeability of support obligations as this decision directly conflicts with that of *Sampson.* Further, the bankruptcy Court erroneously found that the agreement created for Mrs. Cline an unconditional obligation. To the contrary the payment of the $250,000.00, was conditioned on the wife executing and delivering to husband a quit claim deed in favor of the husband conveying all wife's right, title and interest in and to the residence at: 1310 N. Thoroughbred Way, Mustang, Oklahoma. The exchange of $250,000.00, for a quit claim deed was a mutual exchange of benefits between the parties. Mrs. Cline did not testify at trial as to her monthly obligations. Without testimony as to the Respondent's monthly obligations, there was no manner in which the Court could consider the Respondent's need for support. The fact that the $250,000.00, payment was deferred for 12 months after the divorce shows that Mrs. Cline did not have an immediate need for support and the debt obligation did

not function as such. The Court furthermore stated, in its Memorandum of Decision page 5,

> "I can only say it appears to me most likely that this obligation was intended for support for they both believe the source of the funds was likely."

To the contrary, the source of the funds was speculative as clearly stated on page 10 of the Confidential Settlement Agreement. Neither Mr. nor Mrs. Cline, knew the amount of the monies nor exactly when they would become available. In light of this uncertainty, both parties proposed the said property settlement. As *Sampson* stated, if an obligation effectively functions as the former spouse's source of income at the time of the divorce it is in substance a support obligation. In light of the fact that the payment could have been paid up to one year after the divorce, it could not have functioned as support at the time of the divorce. The second part of the *Sampson* inquiry was not addressed as there was no evidence given by Mrs. Cline of her need for support in light of the absence of any evidence concerning her monthly obligations and the deferral of the payment for one year after the divorce decree. The *Cline* decision directly conflicts with that of *Sampson* in that it abolishes the second phase of the analysis

B. THE COURT HAS CREATED CONFLICTING DECISIONS BY FAILING TO DETERMINE THE RESPONDENT'S NEED FOR SUPPORT AT THE TIME OF THE DIVORCE.

The first prong of the *Sampson* test is that the court must divine the spouses' shared intent as to the nature of the payment. *See Sampson, supra,* and *In re: Merrill,* at 914. The inquiry is not limited to the words of the unambiguous settlement agreement. Further, the bankruptcy court was required to look behind labels in the agreement to resolve the issue. However, the settlement agreement in this case provided persuasive evidence that the obligation was part of a comprehensive property settlement between the parties.

The bankruptcy Court noted that the first concern in analyzing the Confidential Settlement Agreement was the provision concerning alimony. Respondent testified at trial that she expressly waived support because her support would come from having a debt free life and Mr. Cline's child support payments. The Court found that the alimony provision as stated on page 11 of the Confidential Settlement Agreement "couldn't be more definitive and the Settlement Agreement containing it was approved by the divorce court."

Furthermore, the Court found that prior to entering the Agreement, Mrs. Cline and her divorce attorney were concerned about the possibility that Mr. Cline might file a bankruptcy petition and referred the matter to a bankruptcy attorney. Mrs. Cline did this because

she was concerned about Mr. Cline filing a bankruptcy from the beginning of the divorce proceedings.

In re: Edwards, *supra*, holds that a state court decree could unambiguously demonstrate the intent of the parties when the parties consider the bankruptcy standard in their negotiations. The only evidence to buttress the argument that the obligation was not a property settlement was that the wife had no independent means of supporting herself and her self–serving testimony at trial that everything in the Settlement Agreement was support. Contrary to this finding though, is that Mrs. Cline did have a high school education with some university experience, she was in good health and apparently had no impediment to seeking employment. She had prior work experience in the oil and gas industry. It was found that the wife was to have a home provided by Appellant free and clear of any liens. The payment of Mrs. Cline's health insurance was to be paid by the Mr. Cline. Also, Mr. Cline was to pay all debts of Mrs. Cline. The Bankruptcy Court further found that the $250,000.00, obligation of the husband did not cease upon death or remarriage of the wife and there was no evidence that any payment made by Petitioner would have been treated as alimony for income tax purposes. Also, Respondent testified that she waived support so she would not have to pay income tax. These facts are clearly contrary to a showing of intent that the sums to be paid were support.

However, under the *Sampson*, analysis a second mandatory inquiry is whether the substance of the payment was in the nature of support at the time of the divorce. This means whether the surrounding facts and

circumstances, especially financial, lend support to such finding. Here, the record was wholly void of Respondent's monthly expenses at the time of the divorce and was not required to be produced by her at trial. Evidence of her monthly living expenses would have shown her need for support. It was determined that Mrs. Cline was going to have a home provided by her husband free and clear, that she received certain personal property, and that she received payment of health insurance premiums by her husband. The Court further found that the Settlement Agreement obligated the husband to pay various debts, particularly credit card debts and provided that she would have a division of certain horses, automobiles, bank accounts and other assets. She was also to receive support in excess of the monthly child support obligation. However, Mrs. Cline was not required to produce any evidence that would prove based on a preponderance of the evidence of her need for support and that the $250,000.00, obligation functioned as support at the time of the divorce. By not making this requirement, the Tenth Circuit has created a conflict between which rule to apply.

If the Bankruptcy Court had applied the rule stated in *Sampson*, there were two facts that illustrated that the obligation did not function as support at the time of the divorce. First, the payment could have been paid up to one year after the divorce. If the obligation had functioned as support, Mrs. Cline would have had the payment due concurrently with the entering of the Divorce Decree. Second, over one year after the divorce, Mrs. Cline moved the State Divorce Court to reduce the obligation to a judgment. The State Divorce Court entered an Order on November 9, 2001, which reduced

the obligation to a judgment and found, for a second time, that the debt obligation was a property settlement. With the complete absence of evidence concerning the Respondent's financial needs, the deferment of the $250,000.00, payment for one year after the divorce and the second acknowledgment by Mrs. Cline that the obligation was a property settlement, the second part of the inquiry as dictated by *Sampson, supra,* was neither met nor required. Now, with the decision in *Cline,* there are two potential analysis. One is the analysis of *Sampson.* The other is the analysis of this case. Such a conflict should be resolved by this Court.

II. REVIEW IS NECESSARY AS THE COURT'S DECISION VIOLATES THE "ROOKER FELDMAN" DOCTRINE

Under the "Rooker Feldman" Doctrine, lower federal courts lack jurisdictional authority to sit in appellate review of state court decisions. The Doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments. The Doctrine takes it name from *Rooker v. Fidelity Trust Company,* 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983). *Rooker* held that Federal Statutory Jurisdiction over direct appeals from state court lies exclusively in the Supreme Court and is beyond the original jurisdictional of Federal District Courts. Moreover, *Feldman, supra,* held that this jurisdictional bar extends to particular claims that are inextricably intertwined with those the state court has already decided.

As the Bankruptcy Court in the District of Connecticut stated in *Edwards*, *supra*, the *Sampson* test, and now the *Cline* test, places the bankruptcy court in the role of an appellate court with the extraordinary power to decide de novo an issue of fact determined in the state trial court. Such a test under either *Sampson* or now, Cline is in violation of the "Rooker Feldman" Doctrine. The "Rooker Feldman" Doctrine is not a constitutional doctrine. Rather, it arises out of a pair of negative inferences drawn from two statutes, 28 U.S.C. § 1331, which establishes the district court's original jurisdiction of all civil actions arising under the constitution, laws or treaties of the United States, and 28 U.S.C. § 1257 which will allow Supreme Court review of final judgments or decrees rendered by the highest court the state in which decision could be had.

While the determination of dischargeability is a core proceeding under 28 U.S.C. § 157, the interpretation and re-litigation of divorce issues in bankruptcy court, however, are not core proceedings under 28 U.S.C. § 157. Those functions are in the nature of a declaratory judgment action provided under state law. Under Oklahoma law, 12 O.S. § 1651, allows the District Courts of the State of Oklahoma to determine the construction and validity of a judgment, decree, deed, contract, trust or other instrument. Bankruptcy Courts have no such counterpart.

28 U.S.C. § 157(c)(1) states that a bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under Title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court

and any final order of judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected. This was not done in the present case.

The "Rooker Feldman" Doctrine can be applicable to bankruptcy law. *See In re: Gruntz*, 202 F.3d 1074, 1084 (9th Cir. 2000). The *Gruntz* Court stated that in non-core proceedings that do not implicate substantive rights granted under Title 11 or effect the administration of the bankruptcy case, the normal rules of preclusion, including the Rooker Feldman Doctrine apply. On November 9, 2001, the District Court of Oklahoma County reduced the debt obligation to a judgment finding that it was a property settlement. The Tenth Circuit was in error when it determined that even though the debt obligation was reduced to judgment as a "property settlement", the State Court did not "decide" the issue of whether the obligation was support. This holding ignores the plain language of the State Court Order and it creates a situation that the "Rooker-Feldman" Doctrine seeks to prevent. In light of the preclusive effect that "Rooker Feldman" places upon the determination of the construction of the subject divorce decree, the November 9, 2001, Judgment and the requirements of 28 U.S.C. § 157(c)(1), the judgment of the bankruptcy court is erroneous.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that the Supreme Court grants review of this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT FILED DECEMBER 19, 2007

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 05-6348

RICHARD A. CLINE,

Plaintiff-Appellant,

v.

DONNA R. CLINE,

Defendant-Appellee.

ORDER AND JUDGMENT*

Before **TACHA**, Chief Judge, **O'BRIEN**, and **McCONNELL**, Circuit Judges.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appendix A

Appellant Richard A. Cline appeals from a decision of the Bankruptcy Appellate Panel of the Tenth Circuit (BAP) affirming a decision of the United States Bankruptcy Court for the Western District of Oklahoma. The bankruptcy court ruled that a $250,000 divorce-related debt Mr. Cline owed to his ex-wife, appellee Donna Cline (the $250,000 obligation), was in the nature of spousal support and therefore could not be discharged in his Chapter 7 bankruptcy.[1] Mr. Cline argued that the $250,000 debt was not support and was susceptible to discharge as part of a property settlement. On appeal by both parties, the BAP affirmed the bankruptcy court's decision on the ground that no basis for reversal existed because the exhibits from the bankruptcy court hearing, including the divorce decree and settlement agreement, had not been included in the record. Mr. Cline filed a motion for rehearing in which he argued that copies of the divorce decree and settlement agreement were not necessary to the BAP's determination because there was no dispute concerning the wording of those documents or with the bankruptcy court's representation of the content of those documents. Mr. Cline argued that the bankruptcy court error was related not to its reading of the provisions of the divorce decree and settlement agreement—which expressly stated that the $250,000 obligation was part of a property settlement—but instead to the court's determination that the parties intended the $250,000 obligation to function as support despite the agreement's express statements to the

1. Despite the fact that the parties are no longer married we shall continue to refer to defendant-appellee as "Mrs. Cline" solely for ease of use and consistency with the record.

contrary. Mr. Cline's motion for reconsideration was denied by the BAP and he filed his notice of appeal in this court.

On appeal, Mr. Cline argues (1) that the BAP erred in affirming the bankruptcy court's decision on the ground that the record before the BAP did not include the trial exhibits, (2) that the bankruptcy court erred in finding that the $250,000 obligation was in the nature of support, and (3) that such a finding violated the *Rooker-Feldman* doctrine.

ANALYSIS

The parties agree that this case is controlled by *Sampson v. Sampson (In re Sampson)*, 997 F.2d 717 (10th Cir.1993). As in *Sampson*, we are faced with application of 11 U.S.C. § 523(a)(5). That statute provides that debts to a "former spouse ... for alimony to, maintenance for, or support of such spouse" may not be discharged in Chapter 7 bankruptcy proceedings provided that "such liability is actually in the nature of alimony, maintenance, or support,". 11 U.S.C. 523(a)(5) (2002). "Whether an obligation to a former spouse is actually in the nature of support is a factual question subject to a clearly erroneous standard of review." *Sampson*, 997 F.2d at 721. "A finding of fact is clearly erroneous if it is without factual support in the record or if, after reviewing all of the evidence, we are left with the definite and firm conviction that a mistake has been made." *In re Miniscribe Corp.*, 309 F.3d 1234, 1240 (10th Cir.2002). We have also held that "[t]he bankruptcy

court's findings should not be disturbed absent the 'most cogent reasons in the record.'" *In re Goin*, 808 F.2d 1391, 1393 (10th Cir.1987) (per curiam) (quotation omitted).

As noted above, the BAP ruled that without the trial exhibits, affirmance was the only option.[2] While we agree with Mr. Cline that resolution of his argument does not require review of the actual settlement agreement, reversal is not required on this ground because "[o]n appeal from BAP decisions, we independently review the bankruptcy court's decision. [W]e review the bankruptcy court's legal determinations *de novo* and its factual findings under the clearly erroneous standard." *In re Commercial Fin. Servs., Inc.*, 427 F.3d 804, 810 (10th Cir.2005) (quotations and citations omitted). Consequently, we must independently review the record on appeal and determine whether reversal is appropriate.

We must, however, delineate the record on which our decision must be made. Generally, under Fed. R.App. P. 6(b)(2)(B)(i), the party appealing to this court files "with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 [either the clerk of the district court or the clerk of the BAP] . . . a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk." In this case, then, the record, strictly under Fed. R.App.

2. We note that the BAP did not dismiss Mr. Cline's appeal as a sanction for his failure to include the trial exhibits in the record, it simply concluded that without the exhibits there was not sufficient record support for Mr. Cline's arguments.

P. 6, would consist of the redesignated portions of the BAP record, the proceedings that occurred in the BAP, and a "certified copy of the docket entries prepared by the clerk under Rule 3(d)." *Id.* at sub-paragraph iii. Because 10th Cir. R. 6.1 provides that rules 30.1-30.3 of the tenth circuit apply to all bankruptcy appeals, however, a party appealing to this court from a ruling of the BAP files an appendix containing the necessary portions of the BAP record. The record on appeal then consists of the portions of the BAP record that Mr. Cline has provided in his appendix, the BAP proceedings, and the docket.

With the record before us, we turn to Mr. Cline's argument that the bankruptcy court improperly applied this court's holding in *Sampson* in determining that his $250,000 obligation to his ex-wife was in the nature of support.

Under *Sampson*,

> whether an obligation is nondischargeable under § 523(a)(5) is a dual inquiry into both the parties's intent and the substance of the obligation. The party seeking to hold the debt nondischargeable has the burden of proving by a preponderance of the evidence [(1)] that the parties intended the obligation as support and [(2)] that the obligation was, in substance, support.

997 F.2d at 723. Mr. Cline argues that the bankruptcy court erred in finding that the parties intended the

$250,000 obligation as support, claiming that the bankruptcy court based its decision solely on the parties' intent without inquiring into whether the obligation was, in substance, support. We disagree.

"The parties' intent is the 'initial inquiry' to determine whether a debtor's obligation to his or her former spouse is actually in the nature of alimony, maintenance or support." *Id.* (quoting *In re Yeates*, 807 F.2d 874, 878 (10th Cir.1986). " 'A written agreement between the parties is persuasive evidence of intent.'" *Id.* (quoting *Yeates*, 807 F.2d at 878).

According to the bankruptcy court the settlement agreement provided that:

> husband will pay the wife $250,000 within 12 months of the divorce decree and, upon receipt of the payment she will then transfer certain real property to him. The obligation to pay the $250,000 is unconditional and is not dependent upon success in recovery on the business claims.

Aplt.App. at 191. Although the divorce decree and the settlement agreement from the divorce are not part of the record on appeal, it is clear from the bankruptcy court's decision that the settlement agreement specified that the $250,000 obligation was to be considered part of the property settlement and that the settlement agreement also contained an express waiver of alimony

by Mrs. Cline.[3] Mr. Cline does not dispute these findings as to the contents of the provisions in the settlement agreement.

How the obligation is treated in the settlement agreement, however, is only *persuasive evidence* of the parties' intent, and we held in *Sampson* that "§ 523(a)(5) requires federal courts to look beyond the label which the parties attach to an obligation." 997 F.2d at 722. In *Yeates* this court held that the determination of the parties' intent "must be made by looking at the substance of the agreement viewed in the crucible of surrounding circumstances." 807 F.2d at 878 (quotation omitted). In the case of *In re Goin* we set forth four factors to be considered when determining intent:

> (1) if the agreement fails to provide explicitly for spousal support, the court may presume that the property settlement is intended for support if it appears under the circumstances that the spouse needs support; (2) when there are minor children and an imbalance of

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3. The bankruptcy court also acknowledged that this provision was found in a section of the settlement agreement entitled "SETTLEMENT OF ANTICIPATED REVENUES FROM CORPORATE ENTITITES," and that testimony indicated that the husband's businesses had claims against other entities that both parties believed that the $250,000 would probably be paid from the substantial recovery that was anticipated from these claims. Aplt.App. at 191. As noted above, however, the obligation was unconditional and was not made dependent on success in recovery on the business claims.

> income, the payments are likely to be in the nature of support; (3) support or maintenance is indicated when the payments are made directly to the recipient and are paid in installments over a substantial period of time; and (4) an obligation that terminates on remarriage or death is indicative of an agreement for support.

808 F.2d at 1392-93. Similarly, in *Sampson*, we held that a "Plaintiff's obvious need for support at the time of the divorce is enough to presume that the obligation was intended as support even when it is otherwise identified in an agreement between the parties as property settlement." *Id.* at 725. "[S]uch a presumption [as to intent] is proper regardless of the label attached to the obligation either in the settlement agreement or in the parties' own minds," since "'the crucial issue is the function the award was intended to serve.'" *Id.* (quoting *In re Williams*, 703 F.2d 1055, 1057 (8th Cir.1983)).

As to Mrs. Cline's need for support at the time of the divorce, we hold that the bankruptcy court did not commit clear error when it found that Mrs. Cline "had no significant employment prospects, at least such as would allow her to continue her standard of living, she had a meager education, no independent income and she most likely had a need for support at the time the divorce was decreed." Aplt.App. at 192. Mr. Cline's argument is basically that it was clear error to rule that despite the clear wording of the settlement agreement the parties intended the $250,000 obligation to be in the nature of

support because Mrs. Cline was "in good health and apparently had no impediment to seeking employment," Br. of Aplt. at 15, and that under the terms of the settlement agreement she was to have few debts or expenses.[4]

This is not enough to find clear error. The parties had been married for approximately twelve years and the marriage produced three children. Mrs. Cline had only a high school education with short university experience, had been employed in "some clerical and secretarial jobs" prior to the marriage but had no meaningful employment after the marriage, and had received a meager inheritance from her father but had no other independent means of supporting herself. She had stayed home and cared for the children after they were born, which Mr. Cline wished her to do. Mr. Cline on the other hand earned approximately $13,000 per month in the oil and gas business and ran at least two companies engaged in this business. One of the factors that may be considered under *Goin*, is: "if the agreement

4. According to the bankruptcy court, under the agreement Mrs. Cline was to have a home provided by Mr. Cline free and clear of any liens. The settlement agreement further provided "for division of certain personal property, and for payment of health insurance premiums by the husband. It goes on to obligate the husband to pay various debts, particularly credit card statements and provides that [the parties] will each have certain horses." Aplt.App. at 191. The settlement agreement also provided that Mr. Cline would pay support for the minor children and also dealt "with college funds for the children, waiver of any claim to retirement annuities, and other miscellaneous provisions." *Id.* at 191-92.

fails to provide explicitly for spousal support, the court may presume that the property settlement is intended for support if it appears under the circumstances that the spouse needs support." 808 F.3d at 1392. Here, it was clear that Mrs. Cline needed support and we are not left with "the definite and firm conviction" that the court made a mistake in ruling that the $250,000 obligation was intended to provide that support. *Miniscribe Corp.*, 309 F.3d at 1240.[5]

As for Mr. Cline's argument that the bankruptcy court failed to proceed to the second step of the *Sampson* test and find that the $250,000 obligation was "in substance" support, and that such a finding could not be proper without evidence of Mrs. Cline's monthly expenses, we find no reversible error. Here, the court found Mrs. Cline's need of support was so obvious as to

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5. Mr. Cline also raises a brief argument on appeal that he "was to pay support [to Mrs. Cline] in addition to his child support" under the terms of the settlement agreement. Br. of Aplt. at 15. Mrs. Cline disputes this claim, stating that the only support expressly granted in the settlement agreement was child support. We shall not address this argument as the only supporting citation in the Mr. Cline's brief is to the settlement agreement itself which we have held is not part of the record on appeal. More importantly, however, we can find no point in the bankruptcy court proceedings where Mr. Cline argued that the settlement agreement already obligated him to pay spousal support. To the contrary, his argument was that no support was granted and the transcript shows that Mr. Cline agreed that "child support" and "reimbursement for medical" were the only monies to be paid to Mrs. Cline under the settlement agreement. Aplt.App. at 145.

indicate that the parties intended for the provision in question to constitute support, despite the settlement agreement's specific language to the contrary. All of the court's findings as to Mrs. Cline's need for support would apply with equal weight to the second step of *Sampson.* While the better practice would have been for the bankruptcy court to have acknowledged the fact that it also considered $250,000 obligation to be "in substance" support, it would be a waste of judicial resources to reverse simply for this finding to be made. Nor do we believe that evidence of Mrs. Cline's monthly expenses was a necessary prerequisite to the bankruptcy court's ruling. Mrs. Cline had spent the twelve years of the couple's marriage as a homemaker and had limited educational and work experience prior to the marriage. We find no clear error in the bankruptcy court's finding that a one-time $250,000 payment was in substance support without requiring specific evidence of what Mrs. Cline's monthly expenses were going to be.

Mr. Cline's final argument is that the bankruptcy court's decision violated the *Rooker-Feldman* doctrine.[6] We disagree.

> The *Rooker-Feldman* doctrine prohibits a lower federal court both from considering

6. "The *Rooker-Feldman* doctrine traces back to Justice Willis Van Devanter's seminal opinion in *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and its elaboration in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)." *Tal v. Hogan*, 453 F.3d 1244, 1255 n. 9 (10th Cir.2006)

> claims actually decided by a state court, and claims inextricably intertwined with a prior state-court judgment. A claim is inextricably intertwined if the state-court judgment caused, actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress.*

Tal v. Hogan, 453 F.3d 1244, 1256 (10th Cir.2006) (quotations and citations omitted). "The determination of whether an obligation arising out of a divorce settlement is in the nature of alimony, maintenance, or support [, however,] is a matter of federal bankruptcy law." *Sylvester v. Sylvester*, 865 F.2d 1164, 1166 (10th Cir.1989). Consequently, the state divorce decree, and the settlement agreement calling the $250,000 obligation a property settlement, did not "decide" the issue of whether the obligation was in the nature of support for the purposes of bankruptcy. The *Rooker-Feldman* doctrine is therefore not applicable.

The judgment of the bankruptcy court is AFFIRMED.

Entered for the Court

Deanell Reece Tacha
Chief Circuit Judge

O'BRIEN, dissenting:

Because the majority decision is contrary to our precedent and the clearly expressed intent of both parties at the time they entered into their divorce decree and settlement agreement, I must respectfully dissent. "[T]he critical inquiry is the *shared* intent of the parties at the time the obligation arose." *Sampson v. Sampson, (In re Sampson)*, 997 F.2d 717, 723 (10th Cir.1993) (*citing Tilley v. Jessee*, 789 F.2d 1074, 1078 (4th Cir.1986)) (emphasis added). Both the settlement agreement and the circumstances point but one way, Mrs. Cline agreed with Mr. Cline to waive spousal support in exchange for a debt-free new beginning, a one-time property settlement payment, and substantial child support payments. Although a discharge of the settlement payment in Mr. Cline's bankruptcy substantially changes Mrs. Cline's payoff, it does not change the parties' intent at the time of the settlement agreement.

We "begin with the assumption that dischargeability is favored under the Code." *Tilley*, 789 F.2d at 1077. Mrs. Cline must prove by a preponderance of the evidence that (1) she *and Mr. Cline* "intended the obligation as support *and* [2] that the obligation was, in substance, support." *Sampson*, 997 F.2d at 723 (emphasis added). While we look to both the parties' agreement and the surrounding circumstances, our inquiry "does not turn on one party's post hoc explanation as to his or her state of mind at the time of the agreement, even if uncontradicted." *Id.*

"[A] written agreement [between the parties] is persuasive evidence of intent." *Tilley*, 789 F.2d at 1077. "[I]f the agreement between the parties clearly shows that the parties intended the debt to reflect either support or a property settlement, then that characterization will normally control." *Yeates v. Yeates (In re Yeates)*, 807 F.2d 874, 878 (10th Cir.1986). In this case, there can be no doubt regarding the parties' written intent.

The testimony at Mr. Cline's bankruptcy hearing revealed a carefully drafted settlement agreement listing the $250,000.00 payment under the Property Settlement section. The settlement agreement clearly states the payment was intended to distribute a potential award in a lawsuit. Child support was addressed in a separate section. And importantly, yet another section clearly and affirmatively waived both parties' rights to spousal support.[1] Even the bankruptcy court recognized the

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1. Research has revealed no case law finding a support obligation when there is an express waiver of alimony and no specific language providing the property settlement is in lieu of alimony or spousal support. Indeed, the cases point in the opposite direction. *See, e.g., Yeates*, 807 F.2d at 879 ("[E]ven though one paragraph of the agreement purports to waive any right to alimony, the paragraph in which the debtor agrees to assume the Transamerica debt specifically states that such assumption was made 'in consideration of Plaintiff waiving her right to alimony.'"); *Osborne v. Osborne (In re Osborne)*, 262 B.R. 435, 443 (Bankr.E.D.Tenn.2001) ("[T]he court is persuaded that the waiver of alimony language in paragraph 20 of the [Marital Dissolution Agreement] expresses the parties' intention that the

(Cont'd)

affirmative waiver of alimony contained in the settlement agreement "couldn't be more definitive." (R.App. at 190). Thus, under our own precedent, there is no question the settlement agreement supplies compelling evidence that the mutual intent of the parties creates a "substantial obstacle" to the success of Mrs. Cline's claim. *Cf. Sampson*, 997 F.2d at 723 (Due to the agreement's structured drafting, the lack of testimony regarding shared intent, and the express language of

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(Cont'd)

Debtor's assumption of the three disputed joint debts not be in the nature of support. Both parties were represented by counsel throughout the divorce proceedings who agreed on behalf of the Plaintiff and Debtor to the alimony waiver language."); *Dennison v. Hammond (In re Hammond)*, 236 B.R. 751, 763 (Bankr.D.Utah 1998) ("The Decree was entered pursuant to the parties' stipulation and specifically and clearly provides that Dennison waived her right to alimony. The Decree, on its face, does not support Dennison's allegation that she waived alimony 'in lieu' of increased ... [p]ayments."); *Fuda v. D'Atria (In re D'Atria)*, 128 B.R. 71, 77 (Bankr.S.D.N.Y.1991) ("[T]he parties in the instant case have unequivocally waived in writing any right to claim from the other alimony, maintenance or support. The plaintiff cannot overcome her own self-imposed waiver."); *Casler v. Casler (In re Casler)*, 94 B.R. 741, 744 (Bankr.M.D.Fla.1988) ("The most important and indicative fact supporting the conclusion that the obligation is dischargeable is the Plaintiff's express waiver of all alimony rights."); *In re Lang*, 88 B.R. 447, 448 (Bankr.S.D.Fla.1988) (express waiver of alimony made "the actual intent of the parties ... clear as a bell."); *Brunson v. Payne (In re Payne)*, 13 B.R. 481, 482 (Bankr.Nev. 1981) (in the absence of other evidence, an express waiver of alimony by the Plaintiff establishes an intent to treat the payment as a property settlement).

the agreement, we found "compelling evidence that the parties intended the obligation as maintenance.").

The surrounding circumstances do not overcome this compelling evidence of intent. *Goin v. Goin (In re Goin)*, 808 F.2d 1391, 1392-93 (10th Cir.1987). According to *Goin*, we first look to whether the agreement provides "explicitly for spousal support." *Id.* at 1392. If it does not, we "may presume that the property settlement is intended for support *if* it appears under the circumstances that the spouse needs support." *Id.* (emphasis added). The majority concludes there was no explicit provision for spousal support. Contrary to the majority's assessment, however, the agreement specifically and explicitly provided for spousal support; it was waived, *i.e.* $ 0. It is important to recognize Mrs. Cline agreed to this provision only after seeking advice from two attorneys—her attorney and a well-known bankruptcy attorney—in anticipation of her husband's bankruptcy filing. This is yet another reason to give weight to the written agreement in that we look to the surrounding circumstances primarily because "it is likely that neither the parties nor the divorce court contemplated the effect of a subsequent bankruptcy when the obligation arose." *Gianakas v. Gianakas (In re Gianakas)*, 917 F.2d 759, 762 (3d Cir.1990) (quotations omitted). The bankruptcy was clearly contemplated at the time of the settlement agreement. In addition, the Majority presumes Mrs. Cline's need for support without any exploration of her actual resources.

As to the second *Goin* factor—the presence of minor children and an imbalance of income—there was no determination in this case that the child support was inadequate to support the family, as was found in *Goin. Goin*, 808 F.2d at 1393 (Determining "$350 a month child support payments were not sufficient to provide the spouse and children with the standard of living to which they had grown accustomed."). Neither was there "evidence that payment of the debt is necessary in order for the plaintiff to maintain daily necessities such as food, housing and transportation" as there was in *Yeates*. 807 F.2d at 879; *see also Williams v. Williams (In re Williams)*, 703 F.2d 1055, 1057 (8th Cir.1983) ("Provisions to pay expenditures for the necessities and ordinary staples of everyday life may reflect a support function.") (quotations omitted); *Gianakas*, 917 F.2d at 764 ("[P]rovision for the family home is, together with food and transportation, one of the traditional components of support and maintenance.").

The third and fourth factors—installment payments terminating on remarriage or death—are equally inapplicable in this case. The payment was intended to be a one time event and the obligation did not terminate should Mrs. Cline remarry or die. Indeed, because Mrs. Cline did not know when the payment would be made within the next year, the funds could not function as a reliable source of ongoing income. In addition, the settlement agreement expressly states the function of the payment at the time of the divorce was to reduce to a sum certain the income from pending lawsuits in which the expectations of the actual recovery "changed vastly," waxing and waning over a period of time. (R.App. at 110.)

Nonetheless, the majority presumes the payment is support because Mrs. Cline did not have the education or experience to secure a job which paid sufficiently to maintain her lifestyle. However, without inquiry into her resources, that is pure speculation—hardly a reliable basis for a decision. What we know is, with the assistance of divorce counsel and bankruptcy counsel, Mrs. Cline agreed to waive exactly what she now seeks. Competent adults must be left with the consequences of their decisions, particularly when those decisions involve the evaluation of uncertain events. When events turn out differently than anticipated, the law does not allow one contracting party to choose another course of action at the expense of the other. Here, the parties designated the $250,000 payment as a property settlement in spite of the obvious tax advantage to the husband in designating it support. When asked by the bankruptcy judge why she waived alimony, Mrs. Cline responded because she understood support would come "partially from other methods; through having a debt-free life and, you know, no bills to pay and child support to help us."[2] (*Id.* at 95.) Notably absent from her explanation is an intention to rely on the $250,000 payment. I would find her candid response compelling evidence of the settlement agreement's accurate documentation of the

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2. The settlement agreement provided for substantial child support and Mr. Cline's assumption of all consumer and tax debt. Mr. Cline also provided Mrs. Cline with her choice of their former home or a new home. Mrs. Cline chose to reside in a new home paid for by the sale of several properties owned by Mr. Cline's businesses. Mrs. Cline received over $8,000.00 in cash at the time of closing.

parties' mutual intent and the essential function of the $250,000 payment as a property settlement. Coupled with her express waiver of spousal support, it should be determinative.

With the benefit of 20/20 hindsight, the bankruptcy judge probably reached a fair result. It is one I would embrace if it were not contrary to law. However, in the face of the settlement agreement it is not enough to merely say Mrs. Cline needed support. Mr. Cline was not required to prove the obligation was as labeled, a property settlement. Instead, it was Mrs. Cline's burden to show the parties' intended the payment, in effect, to be support. She did not do so. Under our case law, I see nothing that overcomes the substantial obstacle created by the compelling evidence of the parties' mutual intent as evidenced by the settlement agreement. Consequently, I am "left with the definite and firm conviction that a mistake has been made." *In re Miniscribe Corp.*, 309 F.3d 1234, 1240 (10th Cir.2002) (quotations omitted). I would reverse the decision of the bankruptcy court and remand for further proceedings.

APPENDIX B — ORDER AND JUDGMENT OF THE UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE TENTH CIRCUIT FILED JULY 20, 2005

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE TENTH CIRCUIT

BAP No. WO-04-069
BAP No. WO-04-071

Bankr. No. 04-10824-BH
Adv. No. 04-1129-BH

IN RE RICHARD A. CLINE,

Debtor.

DONNA R. CLINE,

Plaintiff-Appellee-
Cross-Appellant,

v.

RICHARD A. CLINE,

Defendant-Appellant-
Cross-Appellee.

Appeal from the United States Bankruptcy Court
for the Western District of Oklahoma

Appendix B

Before MCFEELEY, Chief Judge, CLARK, and MCNIFF, Bankruptcy Judges.

ORDER AND JUDGMENT*

PER CURIAM.

The United States Bankruptcy Court for the Western District of Oklahoma entered a Judgment excepting a portion of the Chapter 7 debtor's divorce-related debts to his former spouse from discharge pursuant to 11 U.S.C. § 523(a)(5). Both the debtor and the former spouse have timely appealed this final Judgment.[1] The parties have consented to this Court's jurisdiction because they have not elected to have this appeal heard by the United States District Court for the Western District of Oklahoma.[2] The bankruptcy court's Judgment is AFFIRMED.

I. *Discussion*

The question in this case is whether the bankruptcy court erred in applying § 523(a)(5) to debts owed by the debtor to his former spouse under a Decree of Divorce and Settlement Agreement. Section 523(a)(5) states:

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

1. 28 U.S.C. § 158(a)(1); Fed. R. Bankr.P. 8002(a).

2. 28 U.S.C. § 158(b)-(c); Fed. R. Bankr.P. 8001(e).

Appendix B

> (a) A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt—
>
> . . . .
>
> (5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a . . . divorce decree . . . , determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—
>
> . . . .
>
> (B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support[.][3]

A judgment defining or refusing to define a divorce-related debt as "support" for purposes of § 523(a)(5) is reviewed for clear error.[4] A factual finding is clearly erroneous when "it is without factual support in the record, or if the appellate

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3. 11 U.S.C. § 523(a)(5).

4. *See, e.g., Sampson v. Sampson (In re Sampson)*, 997 F.2d 717, 721 (10th Cir.1993); *Brasher* ex rel. *Turner v. Turner (in re Turner)*, 266 B.R. 491, 494 (10th Cir. BAP2001).

court, after reviewing all the evidence, is left with the definite and firm conviction that a mistake has been made."[5]

In this case we are unable to review the evidence that was before the bankruptcy court because the Appellant and the Cross-Appellant have failed to include in this Court's record documents admitted into evidence below, most notably the Decree of Divorce and Settlement Agreement.[6] As a result, we are compelled to affirm the bankruptcy court.[7]

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5. *LeMaire v. United States*, 826 F.2d 949, 953 (10th Cir.1987) (citation omitted).

6. The debtor's Supplemental Designation of Record designates all trial exhibits. But, copies of the documents admitted into evidence below are not included in any Appendix filed with the Court. Accordingly, they are not part of our record. *See* Fed. R. Bankr.P. 8006 & 8009(b); 10th Cir. BAP L.R. 8006-1(a) ("Once a party has designated the record on appeal in accordance with Fed. R. Bankr.P. 8006, . . . [t]he record must be brought before this court in the appendices required by Fed. R. Bankr.P. 8009(b) and 10th Cir. BAP L .R. 8009-1(b)."); *see generally, Arkla Energy Res. v. Roye Realty & Developing, Inc.*, 9 F.3d 855, 865 (10th Cir.1993) (cross-appellant also has duty to provide adequate record on appeal).

7. *See, e.g., Veile v. Martinson*, 258 F.3d 1180, 1186 (10th Cir.2001) (appellate court must affirm lower court when record before appellate court is insufficient to permit assessment of claims of error); *Scott v. Hern*, 216 F.3d 897, 912 (10th Cir.2000) (same); *Ewers v. Bd. of County Comm'rs*, 802 F.2d 1242, 1250 (10th Cir.1986), *cert. denied*, 484 U.S. 1008 (1988) ("[w]e are unable to review [cross-appellant]'s contention that the court erred in dismissing his property interest claim inasmuch as the evidentiary matters . . . relied on by the court . . . are not included in the record on appeal.") (Citation omitted).

Appendix B

II. *Conclusion*

The bankruptcy court's Judgment is AFFIRMED.

APPENDIX C — MEMORANDUM OF DECISION AND JUDGMENT OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF OKLAHOMA DATED AND FILED SEPTEMBER 16, 2004

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

BK-04-10824

In re:

Richard A. Cline,

Debtor.

AP-04-1129

Donna R. Cline,

Plaintiff,

v.

Richard A. Cline,

Defendant.

MEMORANDUM OF DECISION

This is another of the many complaints where, under 11 U.S.C. § 523(a)(5), bankruptcy judges have to retrospectively determine the intentions of parties to a divorce. In this circuit the lead case on the issue is *Sampson v. Sampson (In re: Sampson)*, 997 F.2d 717 (10th Cir. 1993).

Appendix C

This proceeding is different than most for these parties clearly defined and labeled their obligations under their decree of divorce. However, under the holding of *Sampson* I am to look behind the written statements and divine the parties' intentions at the time of the divorce to find the true substance of their obligations, regardless of what they and the divorce court said.

The first element of concern in this proceeding is the explicit nature of the divorce settlement agreement itself. It spells out what is required and then says:

> ALIMONY: As part of their entire negotiations Wife hereby expressly waives any right, title, or interest in or claim to any alimony payments from Husband, and Husband hereby expressly waives any right, title [or] interest in or claim to any alimony payments from Wife.

This provision couldn't be more definitive and the settlement agreement containing it was approved by the divorce court. Prior to entering into the agreement the wife and her divorce attorney were concerned about the possibility the husband might file a bankruptcy petition and referred the matter to a bankruptcy attorney. In spite of all this review the clause remained in the final, approved document. As I construe *Sampson*, in spite of this clear statement made upon advice of two lawyers experienced in their respective fields of practice, it falls to me to decide what these two intelligent parties "really" meant.

Appendix C

The relevant facts of the case are rather straightforward. The parties were married for some 12 years until their divorce in August 2000. Prior to the marriage the plaintiff-wife had been employed in some clerical and secretarial jobs but undertook no meaningful employment subsequent to the marriage. They had three children and the defendant-husband desired for her to stay at home and care for them. The parties led a comfortable life and the husband was engaged in an apparently successful career in the oil and gas business, earning some $13,000 per month. He had at least two companies organized for these purposes. Both appear to be in good health, and there is no evidence offered to the contrary.

The wife received a meager inheritance from her father and, beyond that, had no independent means of supporting herself. She had only a high school education with a short university experience.

Their divorce settlement provides first that the husband will pay support for the minor children and there's no question this obligation is excepted from his discharge. It then goes on to spell out in great detail their financial obligations. The document is part of the record and it's only necessary here to provide a summary. It first provides the wife is to have a home provided by the husband free and clear of any liens. He did provide the home but it is subject to a judgment lien arising from his business dealings in an amount of approximately $190,000, less some $15,000 paid by the husband. This provision of the agreement clearly provides it is "as property settlement."

The agreement then provides for division of certain personal property, and for payment of health insurance premiums by the husband. It goes on to obligate the husband to pay various debts, particularly credit card statements and provides that they will each have certain horses.

Another portion of the settlement agreement is then labeled:

SETTLEMENT OF ANTICIPATED REVENUES FROM CORPORATE ENTITIES.

It appears from the testimony the husband's businesses had claims against other entities for an indeterminate amount and the parties to this suit appear to have been confident of a substantial recovery on these claims. The settlement agreement provides husband will pay the wife $250,000 within 12 months of the divorce decree and, upon receipt of the payment she will then transfer certain real property to him. The obligation to pay the $250,000 is unconditional and is not dependent upon success in recovery on the business claims. Again, it is stated that this obligation is made as "a property settlement."

Other parts of the settlement agreement deal with college funds for the children, waiver of any claim to retirement annuities, and other miscellaneous provisions.

The obligations of the husband don't cease upon the death or remarriage of the wife and there was no

evidence that any payments made by the husband have been treated as alimony for income tax purposes.

His commitments to deliver the home free and clear, to pay the $250,000, and to pay the joint debts have been breached. It appears from the testimony that the eventual settlement of the business claims was much less than the parties contemplated and was insufficient to pay the debt to the wife — though this was not a condition of his obligation.

Now, in spite of what the parties said in their carefully reviewed document I am required to look behind the decree entered by the divorce court and determine intent based on the factors of *Sampson* which says at "[i]n addition to the persuasive evidence of intent provided by the Agreement" I am to consider "the surrounding circumstances at the time of the parties' divorce . . ." *Sampson*, 997 F.2d at 725.

The factors to consider are the agreement itself, the wife's employment prospects to continue her standard of living, her marketable skills, her education, her health condition, her need for support, and the function served by the obligation at the time of the divorce.

As stated, the wife had no significant employment prospects, at least such as would allow her to continue her standard of living, she had a meager education, no independent income and she most likely had a need for support at the time the divorce was decreed.

I thus conclude that at least part of the settlement was intended for support. The issue then becomes, which part is for support? As stated, the agreement labels all obligations to the wife as property settlement so it isn't helpful in this connection. I can only try to suppose to be the parties when they made the settlement, setting aside the express language of their agreement.

This then seems to lead to the obligation of the husband to pay the $250,000 within one year. While this portion of the agreement creates an unconditional obligation on part of the husband the source of the funds is an expectation the claims against others would soon bear ample fruit. Having confidence in this recovery the wife waived any support obligations and she also waived any share of the proceeds in excess of $250,000 and agreed to deliver the real estate upon payment. Being required to conclude what is support and what isn't, I can only say it appears to me most likely that this obligation was intended for support for they both believed the source of the funds was likely. Thus, this $250,000 debt is excepted from the defendant's discharge.

I can only say the remaining obligations owing to the wife, such as the duty to provide the home free of liens and to pay the miscellaneous joint debts were intended to be as labeled - property settlement. Accordingly these are not excepted from the bankruptcy discharge.

An appropriate judgment will be entered.

Appendix C

Dated: September 16, 2004

By the court:

s/ Richard L. Bohanon
Richard L. Bohanon
United States Bankruptcy Judge

Appendix C

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA

BK-04-10824

In re:

Richard A. Cline,

Debtor.

AP-04-1129

Donna R. Cline,

Plaintiff,

v.

Richard A. Cline,

Defendant.

JUDGMENT

Pursuant to the Memorandum of Decision entered in this proceeding

JUDGMENT is entered declaring that the obligation of the defendant to pay $250,000 to the plaintiff is excepted from his discharge. All other debts resulting from their divorce, save the obligations to pay support for the parties' children, are discharged.

Appendix C

Dated: September 16, 2004

By the court:

s/ Richard L. Bohanon
Richard L. Bohanon
United States Bankruptcy Judge